



## **GUIDANCE DOCUMENT**

**DATE:** January 11, 1995

**TITLE:** Definition of Lead Agency and Responsible Agency under the California Environmental Quality Act (CEQA)

**AFFECTED PARTIES:** Hazardous Waste Management Program  
Site Mitigation Program  
External Affairs Program  
Office of Legal Counsel and Criminal Investigations

**AUTHORITY CITED:** Guidelines Sections 15051; 15052

**PURPOSE:**

The purpose of this memorandum is to reiterate the definition of "Lead Agency" and the criteria in identifying a "lead" agency as defined in the CEQA Guidelines.

**GUIDANCE INSTRUCTIONS:**

The Lead Agency concept is defined as follows:

- (a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an Environmental Impact Report (EIR) or Negative Declaration for the project. This agency is referred to as the Lead Agency.
- (b) Except as provided in subsection (c), the decision-making body of each Responsible Agency shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the project. Each Responsible Agency shall certify that its decision-making body reviewed and considered the information contained in the EIR or Negative Declaration on the project.

- (c) The determination of the Lead Agency to prepare an EIR or a Negative Declaration shall be final and conclusive for all persons, including Responsible Agencies, unless;
  - (1) The decision is successfully challenged on the grounds of non-compliance as provided in section 21167 of the Public Resources Code (PRC);
  - (2) Circumstances or conditions changed as provided in Title 14, California Code of Regulations (CCR), section 15162, such as when new information of substantial importance becomes available, or;
  - (3) A Responsible Agency becomes a Lead Agency under Title 14 CCR, section 15052 under certain conditions.

Section 15051. "Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria:

- (a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency.
- (b) If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.
  - (1) The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.
  - (2) Where a city prezones an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the rezoning. The Local Agency Formation Commission shall act as a Responsible Agency.
  - (c) Where more than one public agency meets the criteria in subsection (b), the agency which will act first on the project in question shall be the Lead Agency.

- (d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the Lead Agency, the public agencies may, by agreement, designate an agency as the Lead Agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices."

In summary, lead agency has principal responsibility for carrying out or approving a project and preparing CEQA documents. For a public project, the agency proposing to carry out the project is the Lead Agency. For private projects requiring multiple government approvals, the Lead Agency will be the agency with the greatest responsibility for supervising or approving the project. [Guidelines section 15051].

Examples where the Department of Toxic Substances Control (Department) is usually considered a Lead Agency for the Site Mitigation Program include:

- a) Remedial Action Plans (RAP);
- b) Removal actions;
- c) Base closures when the Department has lead responsibility for cleanup

In the Hazardous Waste Management Program:

- a) Corrective Action
- b) Permit decisions, e.g., closure approvals, permit approvals

In contrast, a "responsible agency" is an agency other than the Lead Agency that has responsibility for carrying out or approving a project. A responsible agency should actively participate in the Lead Agency's CEQA process, review the Lead Agency's CEQA document, and use the Lead Agency's CEQA document when making a decision on the project. [Guidelines section 15096] In certain instances, a responsible agency may take over a Lead Agency's role. [Guidelines section 15052]

- (a) Where a Responsible Agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate Lead Agency, the Responsible Agency shall assume the role of the Lead Agency when any of the following conditions occur:
  - (1) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.
  - (2) The Lead Agency prepared environmental documents for the project, but the following conditions occur:

- (A) A subsequent EIR is required pursuant to PRC section 15162,
  - (B) The Lead Agency has granted a final approval for the project, and
  - (C) The statute of limitations for challenging the Lead Agency's action under CEQA has expired.
- (3) The Lead Agency prepared inadequate environmental documents without consulting with the Responsible Agency as required by PRC sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.
- (b) When a Responsible Agency assumes the duties of a Lead Agency under this section, the time limits applicable to a Lead Agency shall apply to the actions of the agency assuming the Lead Agency duties.

Examples in which the Department is considered a Responsible Agency:

- a) Permit approval where the Department's hazardous waste is incidental to the whole of the action, e.g., county is the Lead Agency for base closure, while the Department is the Responsible Agency for any environmental remediation at the site.
- b) Activity at a site where hazardous substances are present and regulated by the Department, but will not be impacted by the proposed activity, e.g., CALTRANS is the Lead Agency for route adoption and Right of Way Preservation while the Department is the Responsible Agency for potential soil contamination.

#### **IMPLEMENTATION:**

All affected Department programs shall implement the procedures contained herein. Additional assistance concerning this memorandum may be obtained by contacting PEAS at (916) 322-8162/CALNET 8-492-8162.

**CONTACT:**

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